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Situation of human rights of Rohingya Muslims and other minorities in Myanmar*

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted to the Human Rights Council pursuant to its resolution 29/21, the United Nations High Commissioner for Human Rights examines the situation of human rights of Rohingya Muslims and other minorities in Myanmar, analyses patterns of human rights violations and abuses, particularly discrimination, and concludes with recommendations on measures to be taken by the relevant authorities to improve the situation of minorities in Myanmar.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolution 29/21, in which it requested the United High Commissioner for Human Rights to report on the human rights violations and abuses against Rohingya Muslims and other minorities in Myanmar, particularly the recent incidents of trafficking and forced displacement of Rohingya Muslims. The report is based on information received by the Office of the High Commissioner (OHCHR) from various sources, including the Government of Myanmar, United Nations entities, the Myanmar National Human Rights Commission and civil society entities. The reports that successive Special Rapporteurs on the situation of human rights in Myanmar have submitted since 1992 were also considered, as were the written and oral comments received from the Government of Myanmar.

II. Context

2. Myanmar is one of the most ethnically diverse countries in Asia. The Citizenship Law of 1982 recognizes eight major "national ethnic groups": Bamar (approximately two thirds of the population), Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan. According to lists published in various government documents, the eight groups have been broken down further into 135 recognized "national ethnic groups". An estimated 90 per cent of the population are Buddhists, 4 per cent Muslims, 4 per cent Christians and under 2 per cent Hindus. Most Christians belong to ethnic minorities, including the Chin, the Kachin and the Kayin. Among the Muslim population, the Kaman are a community belonging to one of the 135 recognized ethnic groups, as are Bamar Muslims. Other Muslim groups include "Chinese Muslims" and "Indian Muslims".

3. Rohingya Muslims represent the largest percentage of Muslims in Myanmar, with the majority living in Rakhine State. They self-identify as a distinct ethnic group with their own language and culture, and claim a long-standing connection to Rakhine State. Successive Governments have rejected these claims, and the Rohingya were not included in the list of recognized ethnic groups. Most Rohingya are stateless.

4. In 2014, in the first census conducted by the Government of Myanmar in 30 years, a directive prohibited Rohingya from identifying as such, which led to their de facto exclusion from official figures.[1] Although the data on ethnicity and religion have yet to be released, the publication of census data disaggregated by religion is one priority included in the 100-day plan of the Ministry of Labour, Immigration and Population. The lack of data combined with lack of access to parts of the country pose significant challenges to the analysis of the situation of minorities in Myanmar.

5. Ethnic and religious minorities in Myanmar have a complex and contested history. Even though the agreement adopted at the Panglong Conference in 1947 envisaged the creation of a federal union based on voluntary association and political equality, Burma (then the official name of Myanmar), upon its independence in 1948, became a quasi-federal union largely dominated by the Bamar ethnic group. Subsequent claims by ethnic minorities for self-determination, greater autonomy and the equitable sharing of power and resources have driven non-international armed conflicts, varying in scope and intensity. After the military seized power in 1962, ethnic minorities were increasingly excluded from

[1] See *The 2014 Myanmar Population and Housing Census. The Union Report, Census Report Volume 2*, May 2015, p. 8.

positions of authority, facing restrictions in, inter alia, education, the use of minority languages and religious freedom.

6. Myanmar is undergoing significant transformation. In 2011, after decades of military control, the Government embarked on wide-ranging reforms, including the opening up of democratic space. The reforms culminated in historic elections on 8 November 2015, and the transfer of power to a civilian Government on 31 March 2016. Nonetheless, the military retains 25 per cent of seats in Parliament, giving it a de facto veto on any constitutional amendment. Moreover, the Commander-in-Chief appoints the Ministers to the key portfolios of Home Affairs, Border Affairs and Defence.

7. In May 2015, 700,000 individuals from minority communities were disenfranchised (see paras. 46-47 below). Muslim candidates were disqualified from standing for election, and the Parliament currently has no Muslim members.

8. On 15 October 2015, the Government and eight of the more than 20 ethnic armed groups in Myanmar signed a nationwide ceasefire agreement. Nonetheless, armed conflict persists in Kachin and northern Shan States, while sporadic skirmishes have broken out in Chin, Kayin and Rakhine States. The new Government – the most ethnically diverse Government in decades – has proposed a "twenty-first-century Panglong Conference" to advance the peace process.

9. Rakhine State is one of the poorest states in Myanmar, with limited access to basic services and livelihood opportunities for the entire population. There are long-standing grievances between Rohingya Muslims (population of just over 1 million) and Rakhine Buddhists (the "Rakhine") (around 2 million); and between each community on the one hand and the Bamar-majority-led central Government on the other. Many Rakhine contest the claims of the Rohingya to a distinct ethnic heritage and historic links to Rakhine State, viewing the Rohingya as "Bengali" ("illegal immigrants"), with no cultural, religious or social ties to Myanmar. Some Rakhine also hold the perception that international assistance has focused on the Rohingya, to their detriment. The Rakhine have been subject to long-standing discrimination by past military Governments. Although officially recognized as an ethnic group, the Kaman Muslims in Rakhine State also face entrenched discrimination and other human rights violations (see A/HRC/28/72, para. 41). Since 2012, incidents of religious intolerance and incitement to hatred by extremist and ultra-nationalist Buddhist groups have increased across the country. The Rohingya and other Muslims are often portrayed as a "threat to race and religion".

10. Against this backdrop, tensions have occasionally erupted into violence. The most recent major outbreak in June and October 2012 led to hundreds of cases of injury and death, the destruction of property and the displacement of 140,000 people (see A/67/383, paras. 56–58, and A/HRC/22/58, paras. 47–48). Around 120,000 individuals remain in camps for internally displaced persons in central Rakhine State, with ongoing segregation between Rakhine and Rohingya communities.

11. Systemic human rights violations and lack of opportunities have triggered irregular migration flows of Rohingya from Rakhine State to Thailand and Malaysia, in the same boats as irregular migrants from Bangladesh. Trafficking and smuggling networks have facilitated these flows.[2] More than 94,000 Rohingya and Bangladeshis are believed to have departed since early 2014, with a peak of 31,000 in the first half of 2015.[3] In May 2015, Thailand and Malaysia cracked down on international smuggling networks, which led to the

[2] United Nations Office on Drugs and Crime, *Protecting peace and prosperity in Southeast Asia: synchronizing economic and security agendas*, February 2016, pp. 37-41.

[3] See UNHCR, *Mixed Maritime Movements in South-East Asia*, 2015.

abandonment of 5,000 irregular migrants at sea.[4] Malaysia and Indonesia ultimately offered temporary shelter to migrants affected by the Andaman Sea crisis provided that the international community grant resettlement and repatriation within a year. Many of those rescued at sea remain detained in shelters, camps or immigration detention facilities, and face an uncertain future. The policies and practices of discrimination against the Rohingya, a root cause of irregular migration from Rakhine State, remain to be addressed as part of broader reforms to protect all minorities in Myanmar.

12. Access to justice for victims of human rights violations and abuses has, in the meantime, been sorely lacking. The military and other security forces have generally enjoyed impunity. Endemic corruption and limited capacity and will to conduct effective investigations and prosecutions add to a general lack of public trust in the administration of justice. Structural issues affecting the independence of the judiciary and legal professionals remain. Judicial independence has been further undermined by the undue influence of the executive branch and its interference in politically sensitive cases. Social and cultural stigma deters victims of sexual and gender-based violence from reporting. Minorities face other obstacles that limit further their access to justice, including language, geography and fear of reprisal.

13. In his inaugural address, President U Htin Kyaw described four priorities for the new Government: national reconciliation, peace, a Constitution leading to the establishment of a democratic federal union, and improved quality of life. In April 2016, State Counsellor Daw Aung San Suu Kyi reiterated the importance of national reconciliation and the rule of law for all citizens. Recent steps taken by the Government include the establishment of the Ministry for Ethnic Affairs and the transformation of the Myanmar Peace Centre into the National Reconciliation and Peace Centre. The new Government informed OHCHR that addressing the situation in Rakhine State had been "one of the highest priorities on its agenda", and called for "more time to find durable solutions" (see A/HRC/32/G/9). On 30 May 2016, the Government established the Central Committee on the Implementation of Peace, Stability and Development of Rakhine State, with the State Counsellor as its Chair. According to the Government, the objectives of the Committee are to "bring peace, stability and development to all people in Rakhine State".

14. One key to Myanmar's transformation is addressing past and ongoing human rights violations, which may otherwise undermine the transition. Patterns of entrenched discrimination against minorities, and measures to address them, are described below. This is a challenging process that will require resolve, resources and time. Specific constraints include the continued influence exercised by the military in critical areas of governance. In Rakhine State, the situation is compounded by the highly politicized and polarized environment, including tensions between political parties and continued activity by armed groups. The new Government has nevertheless a unique opportunity to create positive momentum by taking crucial steps to halt discrimination against minorities in law and in practice.

III. Legal framework

15. The human rights obligations of the State are grounded in both treaty and customary law. Myanmar is a party to the Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, the Convention on the Elimination of All Forms of Discrimination against Women, the

[4] The Government of Myanmar rescued two boats on 22 and 29 May 2015.

Convention on the Rights of Persons with Disabilities and other key international treaties.[5] It is a signatory to the International Covenant on Economic, Social and Cultural Rights, which therefore requires the authorities to refrain from actions contrary to the object or purpose of the Covenant. The obligations under these treaties are complemented by customary international law, which includes a number of the rights described in the Universal Declaration of Human Rights.

16. Non-discrimination is central to the promotion and protection of the rights of minorities. According to article 2 of the Universal Declaration of Human Rights, States are required to protect and respect the human rights of all, without distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[6] Article 30 of the Convention on the Rights of the Child describes the right of children belonging to minorities to enjoy their own culture, profess and practise their own religion, and to use their own language. Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to take positive measures to protect the rights and identity of minorities.

17. Considering the context of past and current armed conflict in Myanmar, it is also important to note the relevant provisions of international humanitarian law governing the conduct of parties to an armed conflict, such as the Geneva Conventions (ratified by Myanmar in 1992). International criminal law applies to situations in which individuals may be held individually criminally responsible under international law, such as for crimes against humanity and war crimes.[7] States have the primary obligation to ensure accountability for such crimes.[8] They must investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law.[9]

18. The Constitution of Myanmar of 2008 offers some protection to recognized "national races", requiring the Government to assist in developing their language, literature and culture; to promote solidarity and respect among them; and to promote their socioeconomic development. Chapter VIII of the Constitution protects the rights to equality and non-discrimination, education and health care, and prohibits forced labour and arbitrary detention. Many rights are, however, reserved for "citizens", whereas international human rights law generally requires the State to respect, protect and fulfil the human rights of all individuals within its jurisdiction or control.[10] Moreover, the Constitution imposes limitations on several fundamental rights,[11] or permits their suspension on vague or impermissible grounds.[12]

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[5] Including the Convention on the Prevention and Punishment of the Crime of Genocide, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29) and Worst Forms of Child Labour Convention, 1999 (No. 182).

[6] See also the Charter of the United Nations, Art. 1(3).

[7] For example, Rome Statute of the International Criminal Court, arts. 7-8.

[8] See the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principles 20 and 21.

[9] Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention on the Prevention and Punishment of the Crime of Genocide, art. 1.

[10] See Convention on the Rights of the Child, art. 2. See also OHCHR, *The Rights of Non-citizens*, Geneva (Sales No E.07.XIV.2), 2006, p. 15.

[11] For example, s. 353 states that "Nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person".

[12] For example, the President may, in declaring a state of emergency, "... restrict or suspend as required one or more fundamental rights of the citizens residing in the areas where the state of emergency is in

19. The right to nationality is a fundamental human right.[13] The Citizenship Law of 1982, which provides for three types of citizenship, contravenes the principle of non-discrimination, as the acquisition of nationality is based primarily on ethnicity rather than on objective criteria.[14] "Full" citizenship may be obtained through four different mechanisms. Automatic acquisition of "full" citizenship is reserved for "nationals such as the Kachin, Kayah, Karen (Kayin), Chin, Burman (Bamar), Mon, Arakan (Rakhine) or Shan and ethnic groups who settled in Myanmar before 1823".[15] The list of 135 recognized "national ethnic groups" whose members may acquire citizenship automatically does not include the Rohingya or people of Chinese, Indian or Nepali descent. "Associate" citizenship applies to those whose application for citizenship under the Citizenship Law of 1948 was pending when the law of 1982 came into force. "Naturalized" citizenship may be granted to persons who provide "conclusive evidence" of entry and residence in Myanmar before 1948, and their children born in Myanmar. It may also be granted under certain circumstances by marriage or descent. In addition, applications for "naturalized" citizenship must be at least 18 years of age, have a command of one of the national languages, be of "good character" and of "sound mind". "Associate" and "naturalized" citizens have fewer rights than "full" citizens; for example, their citizenship may be revoked on broad-ranging grounds.

20. In 2015, the Parliament adopted a package of laws seeking to "protect race and religion". The laws discriminate against ethnic and religious minorities and women, in violation of the State's international obligations. The Religious Conversion Law established a State-regulated system for changing religion, which contravenes the right to freedom of religion or belief.[16] The Population Control Health-Care Law adopts a selective and coercive approach to population control, including a potential requirement of 36 months between births, which would violate a woman's right to choose the number and spacing of her children.[17] The law could be used to target areas with significant minority communities. The Buddhist Women's Special Marriage Law seeks to "protect" Buddhist women marrying non-Buddhist men, in contravention of a woman's right to choose freely her spouse.[18]

IV. Patterns of human rights violations and abuses

A. Incitement to hatred and religious intolerance

21. The Constitution of Myanmar prohibits the abuse of religion for political purposes and acts intended or likely to promote hatred, enmity or discord between racial or religious communities. In accordance with international law, the State is required to uphold the right of all persons in its territory to freedom of religion and the principle of non-discrimination.[19]

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operation".

[13] Universal Declaration of Human Rights, art. 15; Convention on the Rights of the Child, Art. 7; Convention on the Elimination of All Forms of Discrimination against Women, art. 9.

[14] Universal Declaration of Human Rights, art. 2.

[15] Citizenship Law, sect. 3.

[16] Universal Declaration of Human Rights, art. 18.

[17] Ibid., arts. 12, 16; Convention on the Elimination of All Forms of Discrimination against Women, art. 16; Convention on the Rights of Persons with Disabilities, art. 23.

[18] Convention on the Elimination of All Forms of Discrimination against Women art. 16.

[19] Universal Declaration of Human Rights, arts. 2, 7 and 18.

22. Since the 1990s, however, extremist or ultra-nationalist Buddhist organizations have actively promoted messages of hatred and intolerance against Muslims and other religious minorities. Groups including the Organization for the Protection of Race and Religion (known as MaBaTha) spread messages based on fear and hatred, compare Muslims to animals, use derogatory language and present Muslims as a threat to the "Buddhist State".[20] During a public rally in Yangon in May 2015, a politician encouraged the crowd to "kill and bury" all Rohingya; the crowd cheered and repeated his statements (A/HRC/31/79, p. 37). Such rhetoric fuels enmity and discord. Recently, ultra-nationalist Buddhist organizations also targeted moderate Buddhists, interfaith activists, women's rights activists and the Special Rapporteur.[21]

23. Efforts must be made to prevent and counter acts of incitement to discrimination, violence and hatred, including through the development of a comprehensive strategy based on international human rights standards. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix) provides useful guidance. The Parliament has recently taken steps to revive discussions on the "Maintenance of Religious Harmony" bill. These should be based on broad consultations with civil society and take into account the Rabat Plan of Action.

24. Underlying root causes should also be addressed, including through preventive education and awareness-raising. Programmes conducted by interfaith and civil society actors to build a more tolerant, diverse and inclusive society should be supported and promoted.

B. Violations and abuses against Rohingya in Rakhine State

25. Patterns of human rights violations against the Rohingya have been documented by successive Special Rapporteurs since 1992. Many result from national, State or local laws, policies and practices targeting the Rohingya owing to their ethnicity, race or religion, either directly or through selective, discriminatory implementation. The tightening of restrictions after the outbreak of violence in 2012 has also had a severe impact on the Kaman community, increasing their vulnerability to human rights violations and abuses.

1. Arbitrary deprivation of nationality

26. A State's prerogative to grant or remove nationality is constrained under international law.[22] The Citizenship Law of 1982 is discriminatory, and contravenes the prohibition of arbitrary deprivation of nationality. It violates the right of every child to acquire nationality,[23] as it fails to protect the acquisition of citizenship for children born in Myanmar with no "genuine link" to another State (see CRC/C/MMR/CO/3-4, paras. 41-42). It also gives overly broad power to the Government to revoke citizenship without due protection. It has led and continues to lead to statelessness. Myanmar has one of the largest stateless populations in the world: some 1,090,000 stateless persons, predominately

[20] See C4ADS, *Sticks and Stones: Hate Speech Narratives and Facilitators in Myanmar*, 2016.

[21] See OHCHR, "Comment by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein on the abuse of the Special Rapporteur on human rights in Myanmar, Yanghee Lee", 21 January 2015.

[22] See General Assembly resolution 50/152, Universal Declaration of Human Rights, art. 15(2); Convention on the Rights of the Child, arts. 7, 8; Convention on the Elimination of All Forms of Discrimination against Women, art. 9; Convention on the Rights of Persons with Disabilities, art 18.

[23] Convention on the Rights of the Child, art. 7.

Rohingya in Rakhine State. The lack of citizenship of the Rohingya community heightens their vulnerability to a range of human rights violations.

27. In June 2014, the Government initiated a citizenship verification process, piloted in Myebon (Rakhine State). Members of the Rohingya community refusing to identify as "Bengali" were arbitrarily excluded from the verification process. The process was reportedly suspended in 2015. Although those granted citizenship in Myebon were allowed to vote in 2015, their freedom of movement and access to basic services and livelihoods after receiving citizenship has not improved. On 7 June 2016, a citizenship verification process – conducted within the framework of the Citizenship Law of 1982 – was relaunched in Kyaukpyu, Myebon and Ponnagyun.

2. Restrictions to freedom of movement

28. The Rohingya and the Kaman face severe restrictions on their freedom of movement. Although in place in northern Rakhine State for decades, restrictions were tightened after 2012 and differ in severity between townships. Even though their stated purpose is to ensure security, their application is disproportionate and discriminatory, given that they target Muslims exclusively. The majority of Rohingya live in northern Rakhine State, where they require official authorization to move between, and often within, townships (in northern Rakhine State, for example, a village departure certificate is required to stay overnight in another village.). The procedures to secure travel are onerous and time-consuming. Failure to comply with requirements can result in arrest and prosecution. Restrictions routinely lead to extortion and harassment by law enforcement and public officials.

29. Since the outbreak of violence in June 2012, town administrators have imposed a curfew in northern Rakhine State, allegedly to "protect the safety of both communities". The curfew, regularly extended since 2012, is reportedly based on section 144(1) of the Myanmar Code of Criminal Procedure, which permits temporary orders in urgent cases and requires a magistrate or delegate to issue a curfew order. OHCHR received credible allegations that the procedure prescribed by section 144(1) has not been followed. The curfew affords broad discretionary powers to the authorities, including with regard to limitations on assembly and prohibiting movement between dusk and dawn. The curfew constrains the ability of Muslims to worship and practice religion freely by limiting gatherings of more than five people. Reportedly, it is only enforced against the Rohingya. While a separate presidential state of emergency was lifted in March 2016 in northern Rakhine State, the curfew remains in place.

30. Most of those displaced during the violence in 2012 reside in central Rakhine State, in approximately 39 camps for internally displaced persons. Restrictions on movement in camps are severe, and many are subject to extreme security measures. In certain locations, there is strict control of access and exits through security checkpoints. Given the nature, extent and duration of confinement, many camps could be considered places of deprivation of liberty under international law (see CCPR/C/GC/35, paras. 3 and 5).[24]

31. The blanket restrictions on freedom of movement for Muslim communities clearly violate international human rights law, which requires any limitations to be necessary and proportionate (see CCPR/C/21/Rev.1/Add.9, para. 14).[25] The restrictions discriminately target the Muslim population and severely constrain their access to livelihood, food, health

[24] See Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex), Principle 12: 1-2.
[25] Universal Declaration of Human Rights, arts. 13 and 29(2).

care and education. Lifting these restrictions is essential in order to address other human rights and humanitarian concerns in Rakhine State.

3. Threats to life, liberty and security

32. Successive Special Rapporteurs have reported patterns of serious human rights violations of the rights to life, liberty and security of the Rohingya by State security forces and other officials. Violations include summary executions, enforced disappearance, arbitrary arrest and detention, torture and ill-treatment, and forced labour (see A/67/383, para. 64 and A/HRC/28/72, para. 38).[26] Following the outbreak of violence in 2012, OHCHR received credible reports of the arbitrary arrest and detention of hundreds of Rohingya, including women and children, and consistent allegations of torture and ill-treatment, including cases of severe beating, burning by cigarettes, burning of beards, forced labour, sexual humiliation and abuse, the denial of medical treatment, degrading conditions of detention and deaths in custody. The indiscriminate nature and scale of arrest and detention without due process and the subsequent treatment in detention has raised concerns of collective punishment.

33. In northern Rakhine State, the arbitrary arrest and detention of Rohingya remains widespread. Their statelessness leaves them particularly vulnerable and a target for extortion. Arrests are often made without grounds for arrest, formal processing or the laying of charges, until release is secured by the payment of a bribe. OHCHR received reports of violence, forced entrance and search of homes, confiscation of property, extortion and excessive use of force related to arrest. Inability to pay onerous bribes can lead to violence, detention or retributive action against the victim's relatives. For those formally charged, fair trial guarantees are often not respected.

34. Arbitrary arrest and detention often lay the ground for other violations, such as torture and extrajudicial killings. OHCHR received credible reports of torture and death in custody of individuals arrested and detained on charges related to arson or alleged links to terrorist groups. The lack of regular and independent monitoring of detention heightens the vulnerability of detainees to torture and ill-treatment.

35. Excessive use of force in the context of demonstrations and law enforcement activities has also been reported, including during patrols and the enforcement of restrictions on movement. Deaths resulting from excessive, unnecessary or disproportionate use of force by law enforcement officials constitute an arbitrary deprivation of the right to life.

4. Sexual and gender-based violence

36. Sexual and gender-based violence perpetrated by security forces against the Rohingya in Rakhine State has been reported for decades. Its prevalence has, however, most likely been underreported owing to lack of access to justice, cultural barriers, stigma and fear of reprisal. OHCHR received reports of sexual violence, including rape, against women who had been arrested or detained, or in the course of law enforcement operations, such as house searches or at checkpoints. OHCHR has no information that such allegations have been investigated or that perpetrators have been held accountable.

37. Domestic violence has been reported within the Rohingya community. Protracted displacement, overcrowding in camps, the lack of livelihoods and constraints on all aspects of life exacerbate tensions and the risk of domestic violence. The lack of available and accessible health and other support services remains a concern. The Government has an

[26] In violation of Universal Declaration of Human Rights, arts. 3, 4, 5 and 9.

obligation to protect all individuals from all forms of violence and to address sexual and gender-based violence within the private and public spheres.[27]

5. Denial of the right to health

38. The availability, accessibility, affordability and quality of health facilities, goods and services are extremely poor across Rakhine State. The consequences of limited access to health facilities include delays in treatment, reliance on alternative health care, the escalation of preventable diseases and poor overall health outcomes.

39. Rohingya and Kaman communities face a disproportionate burden owing to discriminatory barriers, including restrictions on freedom of movement, which have a severe impact on the right to health, in particular with regard to access to emergency and life-saving care. OHCHR received credible reports of death caused by lack of access to health facilities or of timely treatment, often where there was a township hospital in close proximity.[28] In townships surrounding Sittwe, including Pauktaw and Myebon, Muslims have no free access to township hospitals; emergency cases must be referred to Sittwe General Hospital through an onerous and time-consuming referral process, which entails boat travel and police escorts. Muslim patients are confined to a segregated ward, where allegations and rumours of discriminatory treatment persist. The situation leads to a general reluctance to seek care at the facility. In northern Rakhine State, patients have access to township hospitals but are required to obtain costly and time-consuming travel authorizations, pass through checkpoints and face additional limitations imposed by the curfew, which in some cases may lead to serious and life-threatening delays in an emergency situation. Delays in seeking or receiving emergency obstetric treatment can have particularly devastating consequences and are a major cause of death of babies and for women experiencing complications during pregnancy and childbirth.

40. Restrictions placed on Muslim communities in their access to public health facilities constitute a violation of the right to health;[29] if they lead to death, they may also amount to a violation of the right to life. Equal and non-discriminatory access to medical treatment, facilities and care should be ensured for all people in Myanmar, irrespective of religion, ethnicity or citizenship status.

6. Denial of the right to education

41. Rakhine State has one of the lowest rates of literacy in the country, while the lack of education opportunities and access to adequate education affects all its inhabitants. Muslim communities face additional barriers owing to protracted displacement, restrictions on freedom of movement and discrimination (see CRC/C/MMR/CO/3-4, paras. 96-97, A/70/412, para. 36 and A/HRC/28/72, para. 55).[30] Non-citizens, including Rohingya, are excluded from studying a number of "liberal professions", such as medicine, economics and engineering (for example, the university admission guide for 2013 required university applicants to be "citizens of Myanmar"). Since the outbreak of violence in 2012, they are also excluded from tertiary education at the only university in Rakhine State, in Sittwe, on "security grounds".

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[27] Convention on the Elimination of All Forms of Discrimination against Women, art. 2.

[28] In the cases reported, OHCHR is unable to determine whether patients would have survived had emergency treatment been given.

[29] Convention on the Rights of the Child, art. 24; Convention on the Elimination of All Forms of Discrimination against Women, art. 12; Convention on the Rights of Persons with Disabilities, art. 25.

[30] In violation of Convention on the Rights of the Child, arts. 2 and 28.

42. Approximately 30,000 Muslim children in camps for internally displaced persons depend on temporary learning spaces supported by humanitarian organizations. The quality of education is a matter of concern, given the lack of qualified teachers, textbooks, teaching materials and teaching time. The consequences of lost years of education are devastating for future livelihood opportunities and the ability of young members of the Rohingya and Kaman communities to contribute to the development of Myanmar. Preventing co-education of Rohingya and Rakhine is discriminatory and a violation of the right to equal access to education. It also restricts opportunities for interaction and reconciliation between communities.

7. Other restrictions based on local orders

43. In northern Rakhine State, a number of local orders targeting the Rohingya are discriminatory in intent and effect. Many have no legal basis, but are policies and directives issued by government authorities or law enforcement bodies ostensibly to prevent illegal immigration and to control movement and population growth. Although the degree to which the orders are enforced is unclear, their impact remains pervasive. Under one local order, couples are required to follow costly and arduous administrative procedures to secure a marriage permit, which itself includes restrictions on the number of children and a requirement to use contraception. Non-compliance is a criminal offence, punishable by up to 10 years of imprisonment. OHCHR received reports of women and girls resorting to unsafe abortions out of fear of contravening the orders.

44. It is estimated that 5,000 children born in contravention of local orders are excluded from official household lists and placed on a separate list (the "black list"). Moreover, birth certificates have not been issued for Rohingya children since the 1990s. The lack of official documentation and effective legal identity has serious consequences for all stages of life, further restricting their freedom of movement and access to health care and education. It also heightens their vulnerability to human rights violations, such as arbitrary arrest and detention, and extortion.

45. The local orders constitute a violation of fundamental rights, including the principle of non-discrimination, freedom of movement, the rights to privacy, to marry and to found a family, and the rights of the child.[31]

8. Limitation on political rights and documentation

46. In February 2015, the previous Government announced the expiry of "temporary identity certificates" held by some 700,000 stateless people across the country, including the Rohingya, the Chinese and other minority groups. The certificate was the primary document held by stateless persons in Rakhine to confirm their legal residence in Myanmar. In June 2015, a new "identity card for nationality verification" was announced; however, it was widely viewed with suspicion, and acceptance has been extremely low. Consequently, hundreds of thousands of stateless persons in Rakhine have no valid individual identity document confirming their legal residence.

47. During the elections in 2010, holders of temporary identity certificates were granted the right to form and join political parties, and to vote. Before the elections held in November 2015, however, steps were taken to prevent certificate holders from participating in political life.[32] In September 2014, the Parliament amended the Political Parties

[31] See the Convention on the Elimination of All Forms of Discrimination against Women, arts. 1 and 16, the Convention on the Rights of Persons with Disabilities, arts. 18, 22 and 23, and the Convention on the Rights of the Child, arts. 2, 7 and 16.

[32] Universal Declaration of Human Rights, art. 21.

Registration Law, introducing a requirement for party leaders to be "full" citizens, and for party members to be "full" or "naturalized" citizens. In May 2015, the right of temporary identity certificate-holders to vote in the general election was revoked.

9. Forced labour

48. Myanmar has taken significant steps to eliminate forced labour, including by establishing a complaints mechanism and a joint action plan with the International Labour Organization (ILO). Nonetheless, credible reports indicate that, while the use of forced labour has generally declined, it persists in parts of the country where it particularly affects minority groups.

49. Reports that forced labour involving Rohingya in northern Rakhine State continue to be received. Tasks include sentry duty, building and maintenance work, and provisions of materials for such work. Victims state that they cannot refuse work out of fear of repercussions, which may include violence, arrest or detention, fines or other forms of coercion, punishment and intimidation. Forced labour has severe consequences for the mental and physical health of victims and a long-term impact on livelihoods and food security. OHCHR also received reports of forced labour imposed on Rakhine communities, including recently in the context of the conflict between the Tatmadaw and the Arakan Army. It is likely that forced labour practices are underreported in Rakhine State owing to lack of access for independent observers, lack of awareness of the ILO complaints mechanism, and fear of reprisal.

10. Trafficking in persons and migrant smuggling

50. In May 2015, the Andaman Sea crisis highlighted a pattern of human rights violations and abuses linked to irregular regional migration flows facilitated by trafficking and smuggling networks. This included unlawful confinement on boats and at land-based transit points, sexual and gender-based violence, and ill-treatment. It is estimated that some 2,000 Rohingya and Bangladeshi died at sea between 2012 and 2015.

51. Myanmar is a party to the Association of Southeast Asian Nations Convention against Trafficking in Persons, Especially Women and Children of 2015. It has also signed the Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime of 2016, in which the signatories pledged to tackle human trafficking in part by improving the conditions that force people to flee, including "full respect for human rights ... and measures to prevent and reduce statelessness". The second half of 2015 saw a 96 per cent reduction in boat departures from Rakhine State and Bangladesh compared with the same period in 2014. The decrease in boat departures since June 2015 can be explained by various factors, including the greater scrutiny of irregular migration by Governments in the region and the higher prices demanded by smugglers. In order to fully address irregular maritime movement originating from Rakhine State, concrete and meaningful efforts are required to address the push factors and coercive circumstances highlighted in the present report.

11. Protracted displacement and denial of an adequate standard of living

52. Four years after the outbreak of violence in 2012, almost 120,000 people, mainly Rohingya and Kaman, remain internally displaced in Rakhine State. Protracted displacement in deteriorating shelters, limited access to basic services and the inability to move freely make for particularly oppressive living conditions for those in the camps. Besides violating the right to freedom of movement, the conditions also affect the

enjoyment of several economic and social rights, including the rights to education, to the highest attainable standard of health and to an adequate standard of living.[11] A significant number of internally displaced persons are not officially recognized or do receive adequate assistance owing to issues in clarifying and defining who is an internally displaced person. The violence and related restrictions have also severely affected those in Rakhine State who are not among the internally displaced, including those located in remote or isolated communities, who do not receive adequate assistance.

53. It is estimated that 25,000 internally displaced persons returned or were integrated at the site of displacement in 2015 through the Rakhine State Government Resettlement Plan. There is, however, an urgent need to find durable solutions for all those who remain displaced. The process should be informed, transparent, voluntary and rights-based. Furthermore, internally displaced persons should have access to an effective mechanism that ensures or restores housing, land and property, or that provides adequate compensation where return is not feasible. Sufficient guarantees should be given to ensure that housing, land and tenure issues do not lead to further human rights concerns.

54. The segregation of communities in Rakhine poses a significant challenge to the identification of durable solutions. This is particularly the case in Sittwe town, where no plans have been made to address the situation of more than 90,000 internally displaced persons in camps, who often reside only a few kilometres from their place of origin. This enforced segregation of communities requires urgent attention. Targeted measures of peacebuilding, interfaith initiatives and the gradual restoration of social and economic bonds are vital.

12. Assessment

55. The situation described above reflects a pattern of gross human rights violations that affect fundamental civil, political, economic, social and cultural rights of the Rohingya. Widespread discriminatory policies and/or practices targeting them on the basis of their ethnic and/or religious identity have led to an acute deprivation of fundamental rights. Many of the acts described would suggest a widespread or systematic attack against the Rohingya, in turn suggesting the possible commission of crimes against humanity, if established by a court of law (see also A/HRC/25/64, para. 51).

C. Violations and abuses against other minorities

56. Decades of armed conflicts, varying in scope and intensity, have taken place against a complex backdrop of long-standing grievances against the Bamar-dominated central Government and military. Successive Special Rapporteurs have consistently reported allegations of violations of international humanitarian law and human rights law in the context of these conflicts. The absence of adequate accountability mechanisms has resulted in impunity, thereby eroding further the rule of law and undermining sustainable peace and reconciliation. While the signing of a nationwide ceasefire agreement is a significant step, it is only a starting point. Inclusive political talks – with the full participation of ethnic minority communities, including women representatives – are critical to address the root causes of conflict and long-standing grievances of ethnic communities. The new Government's proposal for a national peace conference is welcome.

[11] Universal Declaration of Human Rights, arts. 25 and 26; International Covenant on Economic, Social and Cultural Rights, arts. 11-13.

57. In the context of armed conflict, allegations of violations of international humanitarian law and human rights law involving the military have included the deliberate targeting of and indiscriminate attacks against civilians, the use of child soldiers, forced displacement, the summary execution of civilians and captured fighters, forced labour, arbitrary arrest and detention, torture and ill-treatment, and sexual violence. Credible reports detail practices that include military personnel ordering civilians to walk before them as "human mine sweepers"; a policy of categorizing certain zones as "black areas", giving the military free rein to target anyone in that area, including civilians, contrary to the principle of distinction; and the "live off the land" policy, resulting in the confiscation by the military of land, livestock or harvested crops from civilians.

58. In Kachin and Northern Shan States, where fighting has intensified, there are ongoing reports of violations by all parties to the conflicts (see A/70/412, para. 50 and A/HRC/31/71, para. 52). In June 2011, the breakdown of a 17-year ceasefire in Kachin State caused significant displacement; 96,000 people remain internally displaced. Fighting in 2015 caused the displacement of an additional 100,000 people, including 80,000 from the Kokang Self-Administered Zone. Credible reports of violations of international humanitarian law by the military include a lack of distinction between civilians and fighters and indiscriminate firing.

59. The reported abuses by ethnic armed groups against civilians include the forced recruitment and use of children in hostilities, forced displacement of the population, torture, ill-treatment and the summary execution of captured Tatmadaw personnel and ongoing reports of harassment, arbitrary detention, and extortion by some of these groups (A/HRC/31/71 para. 52). There are also ongoing reports of the use by both the military and ethnic armed groups of civilians as porters, sentries, guides and human shields, and also the use of anti-personnel mines in civilian areas (A/HRC/28/72, para. 31).

60. Cases of sexual and gender-based violence against women of ethnic minority communities perpetrated by Myanmar security forces have been documented for many years. Such violence continues to be reported, and is particularly prevalent in conflict-affected areas, such as Kachin and Shan States, with credible reports of rape, sexual slavery, and forced and servile marriages. According to reports, victims include women and men, girls and boys, including children as young as 7 years of age (S/2014/181, paras. 37-39). The risk of sexual violence appears to be greater during home invasions, movements of populations and forced portering. Some reports by civil society sources allege that rape and sexual torture are committed on military bases and in prisons. Reports of sexual violence increase for communities living in close proximity to areas with a large military presence.

61. The confiscation of land by the military for barracks and military camps, crop confiscation, the production of food for soldiers, and designation of forbidden "high security areas" have consistently been reported in areas where ethnic communities reside (A/66/365, para. 64). Violations of housing, land and property rights, including through development-induced displacement, have also been increasingly documented since 2012. Private local commercial interests, often with strong links to the military, have allegedly engaged in land grabbing and forced evictions. Years of continuing conflict and military campaigns in ethnic areas have resulted in extensive displacement in eastern Myanmar and along the border with Thailand. Many of the long-term displaced, including more than 100,000 refugees in Thailand, are reportedly reluctant to return out of fear for their safety owing to the outbreak of sporadic skirmishes, the continued military presence, and the presence of landmines and unexploded ordnance.

62. A significant disparity in access to education persists. In ethnic minority areas, especially conflict-affected areas, many schools are either not operational or inaccessible. Under the policy of previous military Governments, the use and teaching of minority languages in schools was prohibited, and informal community schools providing learning in

minority languages were banned in some areas. Recent national education legislation (such as the National Education Law) has opened up space for the use of ethnic languages in classrooms, while State and regional governments are empowered to develop and implement language policy at the regional and State levels.

63. For many years, Christian communities in Myanmar have faced restrictions in their freedom of religion or belief, especially in Chin, Kachin, Kayin and Kayah States. Special procedure mandate holders have reported allegations of human rights violations targeting Chin Christians, including of forced labour for the construction of monasteries and pagodas, the forcible confiscation of land, induced or coerced conversions to Buddhism, the closure of churches and "house" churches, and the destruction of crosses (A/HRC/22/67, p. 127). Allegations of arbitrary arrest, detention and torture of religious leaders, missionaries, church workers and others have also been reported (A/HRC/25/74, p. 105). Like Muslim communities, Christian groups report difficulties in obtaining permission to renovate, extend or construct religious buildings (see A/69/398, para. 40).

Assessment

64. The information received by OHCHR suggests that minority groups have suffered a wide range of human rights violations and abuses. Moreover, in the context of armed conflicts, reports over many decades have documented violations of international humanitarian law allegedly committed by the military and armed groups. If established in a court of law, some of these violations could amount to war crimes.

V. Conclusions

65. **The human rights situation of the Rohingya and other minorities in Myanmar is a cause of utmost concern. The scope and patterns of violations and abuses reported cannot be ignored; systematic and systemic discrimination and policies of exclusion and marginalization are all too often at the root of future conflicts. On 25 March 2013, the Special Adviser of the Secretary-General on the Prevention of Genocide warned that failing to address the immediate consequences and root causes of violence between Rakhine Buddhists and Rohingya Muslim could have "serious consequences which the international community has solemnly promised to prevent".**

66. **Conversely, addressing the violations and abuses identified by the High Commissioner in the present report may help to provide a safe and peaceful environment for all in Myanmar, planting the seeds for growth, prosperity and harmony.**

67. **The new Government has the responsibility and the opportunity to halt these violations and abuses. It must seize the momentum by stopping discriminatory policies and practices and repealing discriminatory laws.**

68. **Measures are needed to break the cycle of impunity and to promote accountability in the interests of justice, reconciliation and the protection of the human rights of all people in Myanmar. In accordance with the State's obligations under international norms and standards, the authorities of Myanmar should ensure that all past and ongoing allegations of human rights violations and abuses are investigated promptly, thoroughly, impartially and independently. This will ensure accountability and the access of victims to an effective remedy, including adequate reparation and respect for their right to know the truth about violations.**

69. **Such efforts should be made in close collaboration with civil society and with the support of the international community. They will be essential to lay solid and**

sustainable foundations for the rule of law, based on full and equal respect for human rights, including the rights of persons belonging to minorities and to consolidate the democratic transformation of Myanmar.

70. The Government should also take comprehensive legal and policy measures that address the root causes of all human rights violations and abuses, and prevent their recurrence. Victim and community perspectives should be central to such a process, including through broad and inclusive consultations and participation throughout the design and implementation of any measures aimed at addressing the past.

71. Progress should also be made in reforming the legal framework, including the Constitution of 2008 and the Citizenship Law of 1982, so that it is fully consistent with the State's international human rights obligations. The report of the Special Rapporteur submitted to the Human Rights Council at its thirty-first session (A/HRC/31/71) is a useful tool in this regard. The establishment of mechanisms to ensure that any new legislation is fully compliant with the State's international human rights obligations is also of critical importance.

72. With strengthened independence and an enhanced protection mandate, the Myanmar National Human Rights Commission could play a critical role in upholding and protecting the human rights of all people in Myanmar. Its powers to inquire into violations committed by law enforcement officials, to demand accountability from the Government, to denounce discrimination and incitement to hatred or violence and to visit places of detention could be utilized to strengthen protection of minorities.

73. While some of the measures necessary to address concerns raised in the present report should be taken promptly, the High Commissioner acknowledges that others will require a staged, longer-term approach in the context of the political transition.

74. OHCHR stands ready to provide the Government with support in its efforts to protect and promote the human rights of all people in Myanmar, and to strengthen effective rule of law. The focus on discrimination that underpins the Sustainable Development Goals provides an important framework to ensure that no minority is left behind in the State's accelerated development. The collective and collaborative effort of the United Nations in the country will also be crucial to addressing critical human rights issues.

VI. Recommendations

A. Policies and practices

75. The High Commissioner recommends that the relevant authorities in Myanmar:

(a) Abolish all discriminatory local orders in Rakhine State, including those restricting movement and the rights to marriage and family life; immediately remove arbitrary requirements for travel; facilitate movement within and between townships; and promptly and clearly communicate these decisions to all relevant authorities;

(b) Establish a road map and a time frame for lifting all restrictions on freedom of movement in Rakhine State, and where security considerations remain, ensure that restrictions are necessary, proportional and not discriminatory;

(c) **Promptly lift the curfew order in northern Rakhine State, remove arbitrary limitations on the right to freedom of assembly, and guarantee freedom of worship;**

(d) **Remove all discriminatory and restrictive bureaucratic requirements for emergency medical referrals, and ensure unhindered access for all communities to government hospitals in all townships in Rakhine State;**

(e) **Ensure the replacement or issuance of identity documentation for all individuals residing in Myanmar, regardless of their citizenship status; and ensure that all children are registered at birth, without discrimination, and implement promptly a process to register all unregistered children, including all Rohingya children;**

(f) **Find durable solutions for all internally displaced persons in Rakhine State and conflict areas in accordance with the Guiding Principles on Internal Displacement.**

B. Legislation

76. **The High Commissioner recommends that the relevant authorities in Myanmar:**

(a) **Take progressive steps towards the removal of all discriminatory legal provisions, including in the Constitution, the Citizenship Law of 1982 and the four "race and religion laws";**

(b) **Prevent and sanction incitement to discrimination, hatred and violence, including through the development of a comprehensive strategy based on international human rights standards, and ensure that the Parliament takes into account the Rabat Plan of Action when discussing the "Maintenance of Religious Harmony" bill.**

C. Accountability

77. **The High Commissioner recommends that the relevant authorities in Myanmar:**

(a) **Undertake a comprehensive inquiry into the situation of minorities in Rakhine State and other areas in Myanmar, in consultation with all stakeholders and in accordance with international human rights law and standards with a view to recommending measures of accountability, and address the root causes of discrimination, foster reconciliation between communities and prevent recurrence of violations;**

(b) **Ensure prompt, thorough, independent and impartial investigations into all alleged violations of human rights and international humanitarian law, including those committed by law enforcement officers and security officers, and subsequent prosecutions; and to that end, remove any legal or legislative barriers to criminal accountability;**

(c) **Ensure national laws on arrest and detention and their application are consistent with international human rights standards; and that law enforcement action is conducted in accordance with human rights standards, including the principles of legality, necessity, proportionality and non-discrimination;**

(d) **Ensure that independent civilian and parliamentary oversight mechanisms over security sector actors and robust complaints mechanisms are established and operational;**

(e) **Ensure investigations into allegations of forced labour, and the prosecution of those responsible.**

D. Prevention of further violations and abuses

78. **The High Commissioner recommends that the relevant authorities in Myanmar:**

(a) **Ensure that persons belonging to minorities can enjoy all their human rights and fundamental freedoms without discrimination and with full equality before the law;**

(b) **Issue clear instructions on the prohibition of forced labour to the police, border guard police and the General Administration Department;**

(c) **Issue clear instructions on the prohibition of trafficking of persons to law enforcement agencies, and ensure that victims are protected and treated in accordance with international human rights standards;**

(d) **Ensure that measures aimed at addressing irregular migration and combating transnational organized crime, including trafficking of persons and smuggling of migrants, do not adversely affect the human rights and dignity of migrants and refugees.**

E. Peace process

79. **The High Commissioner recommends that the relevant authorities in Myanmar:**

(a) **Ensure broad consultations with and the full participation of all local and affected communities in the peace process, including ethnic minorities, civil society and women;**

(b) **Ensure that human rights protection is placed at the centre of the work of the National Reconciliation and Peace Centre and ceasefire monitoring mechanisms.**

F. Institutions

80. **The High Commissioner recommends that the relevant authorities in Myanmar:**

(a) **Undertake institutional reforms to ensure respect for the rule of law;**

(b) **Improve access to justice before independent and impartial courts through fair procedures, and ensure that the administration of justice complies fully with international human rights norms and standards, including the principles of independence and impartiality of the judiciary;**

(c) **Strengthen the mandate of the Myanmar National Human Rights Commission so that it is able to perform its functions independently and in full compliance with the Paris Principles, including monitoring of all places of detention;**

(d) **Increase sustained engagement and cooperation with OHCHR to enhance the promotion and protection of human rights in Myanmar.**

G. Implementation

81. **The High Commissioner recommends that the Human Rights Council follow closely the implementation of the above-mentioned recommendations, and encourage the Government to make meaningful progress in this regard.**